

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>HERMAN LOGAN</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 183,888; 189,836;
<b>UNITED PARCEL SERVICE</b>	)	189,837; 190,071;
Respondent	)	190,072; 190,073
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals a Preliminary Hearing Order entered by Administrative Law Judge Floyd V. Palmer dated December 4, 1995.

**ISSUES**

Respondent contends the Administrative Law Judge exceeded his authority when he assessed the costs of an independent medical examination against the respondent and, also, complains that the Administrative Law Judge did not allow respondent input into the physician appointed but, instead, selected a physician who, among other things, does not actively treat patients, who is not an orthopedic specialist, and who primarily examines patients at the request of claimants' attorneys.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Following a prehearing settlement conference held pursuant to K.S.A. 44-510e(a), the Administrative Law Judge Floyd V. Palmer appointed P. Brent Koprivica, M.D, to perform an independent medical evaluation. The Administrative Law Judge also ordered respondent to pay the cost of the medical examination and report. Respondent contends

the Administrative Law Judge exceeded his authority when he assessed the cost of the examination and report against the respondent. Respondent is also unhappy with whom the Judge appointed to conduct the evaluation.

The initial issue is whether the Appeals Board has jurisdiction to review the Order entered by Administrative Law Judge Floyd V. Palmer on December 4, 1995. After reviewing the arguments contained in both the application for review and the briefs filed by the parties, the Appeals Board finds and concludes that it does not have jurisdiction to review the Order at this juncture of the proceeding.

The decision of the Administrative Law Judge to have an independent medical examination performed on the claimant and to assess the costs of such an examination to the respondent is interlocutory in nature and made during the litigation of a workers compensation case pending before the Administrative Law Judge. This is not a final order that can be reviewed pursuant to K.S.A. 1995 Supp. 44-551. Neither is this an order entered pursuant to the preliminary hearing statute K.S.A. 44-534a, as preliminary hearing orders are limited to issues of furnishing medical treatment and payment of temporary total disability compensation. The Order now before the Appeals Board pertains to an interlocutory matter, ordering an independent medical examination, over which an Administrative Law Judge has authority to order during the litigation of the case.

There is nothing in the record to indicate respondent ever attempted to voice an opinion as to the selection of an independent physician or was prevented from doing so. Nor is there any indication that respondent objected to the Judge's choice prior to the filing of this appeal. However, the respondent now complains that it was not allowed input into the selection of the evaluating physician and disagrees with the Judge's choice. Respondent alleges 70 to 75 percent of Dr. Koprivica's medical practice is comprised of examining and testifying for Kansas claimants. In support of this allegation, respondent attaches two pages of transcript from a deposition allegedly taken of the doctor in an unrelated proceeding. Respondent's attempt to insert matters into the record that were not before the Administrative Law Judge is improper and such material will not be considered. The respondent fails to cite authority for its contention that the respondent has a right to provide input in the selection process of the neutral physician or to support its other complaints.

The Administrative Law Judge has broad discretion in selecting a physician to conduct an independent medical evaluation and is encouraged to select those physicians in whom he has confidence. There is no showing that the Administrative Law Judge has acted arbitrarily or capriciously. Although the respondent does not have a right to provide input in the selection of the neutral physician, there is nothing that prevents respondent's counsel from reaching agreement with opposing counsel regarding the selection of a neutral physician and making constructive suggestions to the Administrative Law Judge.

Because the Administrative Law Judge did not exceed his jurisdiction and authority in appointing Dr. Koprivica, the Appeals Board does not have the jurisdiction and authority to review that portion of the Order.

Respondent counsel's law firm has on several previous occasions requested review by the Appeals Board of the same issue. Since the appeal is not necessary to preserve the issue, this raises concern about respondent counsel's motivations in filing these requests for reviews and whether sanctions should be considered.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the application for review filed by the respondent is dismissed as the Appeals Board lacks jurisdiction to review the Order of Administrative Law Judge Floyd V. Palmer dated December 4, 1995.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Aline Pryor, Kansas City, KS  
Frederick J. Greenbaum, Kansas City, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director